

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of Part 90 of the)
the Commission's Rules to Eliminate)
Separate Licensing of End Users of)
Specialized Mobile Radio Systems)

PR Docket No. 92-79

To the Commission:

COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute (API), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (Commission), hereby respectfully submits these Comments in response to the Notice of Proposed Rule Making (Notice) adopted by the Commission on April 9, 1992 in the above-captioned proceeding.^{1/}

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^{1/} Notice of Proposed Rule Making, FCC 92-172, 57 Fed. Reg., 20070 (May 11, 1992).

I. PRELIMINARY STATEMENT

1. The American Petroleum Institute is a national trade association representing over 200 companies involved in all aspects of the oil and gas industries, including exploration, production, refining, marketing and pipeline transportation of petroleum crude oil, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as a spokesperson before federal and state regulatory agencies and legislative bodies. The API Telecommunications Committee is one of the standing committees of the organization's General Committee on Transportation. The committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities employed in the oil and gas industries.

2. The Telecommunications Committee is API's primary committee concerned with telecommunications regulatory matters. It is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications facilities, two-way land mobile radio stations in the Private Land Mobile Radio Services and point-to-point microwave systems in the Private Operational-Fixed Microwave Service. These telecommunications

facilities are used to support the search for and production of oil and natural gas. These systems are also utilized to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, and for the processing and refining of these energy sources, as well as for their ultimate delivery to industrial, commercial, and residential customers. The facilities licensed to API's members are thus essential to the provision of our nation's energy sources.

3. The Commission has proposed in this proceeding to eliminate the current licensing of end users who have mobiles operating on the mobile relay facilities of Specialized Mobile Radio (SMR) systems. Similar to other 800/900 MHz system licensees, the Commission proposed that the SMR operator be licensed for the associated control points, control stations and mobile transmitters that operate on their systems. The end user, under the amended rules, would operate pursuant to the SMR's authority. Additionally, the Commission proposed to eliminate the annual and license renewal reports that SMR licensees must currently submit pursuant to Section 90.651(a).

4. In lieu of the end user licensing and the submission of loading reports, the Commission proposed that

SMR operators submit loading data when (1) a licensee applies for additional channels to expand an existing system or to construct a new system within 40 miles of its operating system; or (2) an existing licensee of a trunked system in a wait-list area applies to the Commission for renewal of a system license, after its initial five-year term. The Commission proposed that this loading data reflect the average number of mobiles and control stations operating on the licensee's system on the first business day of each month for the six-month period immediately preceding the filing of the application. This figure would be based on the licensee's business records during that six-month period and reported on the appropriate application form. The Commission would not require these underlying business records to be submitted with the application unless a question should arise regarding the data. In this event, the applicant would be required to provide these records to substantiate its loading report. The Commission has solicited Comments on the method and type of business records that licensees should use to determine their mobile loading.

5. Finally, the Commission proposed to relax the requirement of Section 90.135 that relates to the modification of licenses for trunked Specialized Mobile

Radio licensees. Trunked SMR licensees would not need to modify licenses for changes in the number of location of control or mobile transmitters. Conventional SMR system operators would still be required to secure such modifications to the their license.

6. API's member companies, for the most part, do not hold licenses in either the 800/900 MHz SMR services, but they do operate a significant number of large systems licensed on channels from the 800/900 MHz Industrial/Land Transportation or Business Pools. Through intercategory sharing, provided for in Section 90.621(a), 800 MHz Industrial/Land Transportation and Business Radio Service eligibles may expand existing systems by seeking SMR service pool channels. Conversely, in the 800 MHz band, SMR systems may be expanded through intercategory sharing using Industrial/Land Transportation and Business pool channels. API's member companies, therefore, have an interest in ensuring that SMR operators meet the requisite loading standard to expand existing systems through intercategory sharing. Accordingly, API takes this opportunity to comment in this proceeding.

II. COMMENTS

7. API supports the Commission's proposal to eliminate the end-user licensing of mobiles and control stations that operate on SMR systems, and to transfer the licensing and regulatory responsibility for the operation of mobile units and control stations to the SMR operator. Following adoption of such a proposal, the administrative resources that are currently utilized by the Commission in processing these applications could be redirected to meeting other pressing goals. Additionally, such licensing will assist all users of the 800/900 MHz system to be able to ascertain the actual mobile loading on any station by accessing the Commission's database. Currently, loading information for SMR stations are recorded on Commission loading cards that are not easily accessible by the public.

8. API does have some concern that the Commission not deregulate the SMR service in such a manner as to permit SMR licensees to "paper load" a system to obtain additional channels via the intercategory sharing mechanism. API is concerned that reliance merely on loading data that is provided by an SMR licensee without a mechanism to allow independent verification by the Commission may lead to unhealthy manipulation of the loading figures.

9. API urges the Commission to implement additional requirements regarding the form of the loading data and adopt a specific sanction should an SMR licensee misrepresent its loading levels or fail to provide the underlying business record when requested by the Commission. First, API suggests that the loading data (1) be submitted with an affidavit attesting to the accuracy of the representations and signed subject to the penalty of perjury, and (2) be a document that the SMR operator keeps in the regular course of business, and not a document created based on calculations derived from unidentified business records.

10. Further, even though the Commission may have the ability to impose appropriate sanctions under the Communications Act and recommend prosecution under Section 101 of Title 18 of the United States Code, API is not confident that these general sanctions are sufficient to prevent an abuse of the Commission's process. API recommends that the Commission adopt a specific sanction in Part 90 similar to that imposed when a licensee of a trunked system fails to achieve the requisite loading level under Section 90.631(b) and one or more channels are recovered by the Commission. This section prohibits the licensee from

applying for additional channels to expand the same system for a period of six months.

11. API urges the Commission to adopt a rule in this proceeding that provides a similar six-month moratorium on the submission of an application requesting authority for additional channels when a prior application is either dismissed or withdrawn because the SMR operator was unable to provide sufficient substantiation for its loading data or the loading data is found to be fraudulent. API believes that this provision would discourage operators from providing information that does not accurately represent the mobile units employing the SMR system.

III. CONCLUSION

12. API generally supports the Commission's initiative in eliminating administrative regulations that present more burden than benefit to the Commission and to the public. However, API recommends that the Commission insure that the form of the mobile loading data required to be filed by SMR operators for obtaining additional 800/900 MHz channels carries a reasonable assurance of reliability. Further, API recommends that a specific penalty be adopted to deter any SMR operator from

misrepresenting to the Commission the average number of mobile units employing the system on a regular, primary basis.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute hereby respectfully requests the Federal Communications Commission to expeditiously adopt a Report and Order in this proceeding in the manner consistent with the views expressed herein.

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE

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